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Attorney for Plaintiff Kelly Smith

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Kelly Smith,	Case No.
Plaintiff,	COMPLAINT
vs.	
Life Insurance Company of North America, a foreign corporation	
Defendant.	

For her Complaint, Kelly Smith ("Ms. Smith" or "Plaintiff"), alleges as follows:

PARTIES, VENUE, AND JURISDICTION:

1. Plaintiff Kelly Smith is a resident and citizen of Pima County, Arizona, and was a resident and citizen of Pima County, Arizona at all times material to the Complaint.

2. Plaintiff's claim is for long-term disability (LTD) benefits, the waiver of her life insurance premiums under the life insurance plan's Life Waiver Of Premium (LWOP) provision, and for other benefits to which she may be entitled and which were provided to her under her employer's ERISA-governed benefits plan (the "Plan").

1 3. Defendant Life Insurance Company of North America, d/b/a Cigna
2 (“LINA”) is a foreign corporation that is authorized to do business in Arizona
3 and is doing business in Arizona.

4 4. The Court has jurisdiction under the Employee Retirement Income
5 Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.*

6 5. Venue is proper in this district pursuant to 29 U.S.C. § 1132(e)(2) and
7 28 U.S.C. § 1391 because the “breach” of the LTD plan occurred in Pima County,
8 Arizona, and because defendant LINA may be found in Pima County, Arizona.

9 **THE LONG-TERM DISABILITY AND LIFE WAIVER OF PREMIUM PLANS**

10 6. The LTD Plan provides Ms. Smith with income replacement in the
11 event of her disability, as defined under the Plan.

12 7. The LTD Plan is fully-insured by LINA, which also administers
13 claims for benefits under the Plan.

14 8. When making decisions regarding Ms. Smith’s entitlement to
15 benefits, LINA was acting as a fiduciary under ERISA.

16 9. Under the Plan, after satisfying a 180 day “elimination period”
17 during which benefits are not payable, Ms. Smith is entitled to LTD benefits for
18 twenty-four months if she is unable to perform the material duties of her regular
19 occupation and is unable to earn 80% or more of her indexed pre-disability
20 earnings.

21 10. After twenty-four months of LTD benefits, Ms. Smith is entitled to
22 benefits if she is unable to perform the material duties of any occupation for
23 which she is, or may reasonably become qualified to perform, and is unable to
24 earn 60% or more of her indexed pre-disability earnings.

25 11. The LTD plan does not grant LINA discretion to determine
26 entitlement to benefits.

1 12. Under the LWOP (life waiver of premium) plan, LINA waives the
2 premiums for Ms. Smith's life insurance coverage for nine months if she is
3 unable to perform the material duties of her regular occupation or is receiving
4 disability benefits under the LTD Plan, and thereafter waives premiums if she is
5 unable to perform the material duties of any occupation she is, or may
6 reasonably become qualified to perform.

7 13. After nine months, the LWOP definition of disability is the
8 functional equivalent of the LTD plan's "any occupation" definition of disability.
9 Accordingly, if Ms. Smith is found entitled to LTD benefits under the LTD Plan's
10 "any occupation" definition of disability she should be considered disabled
11 under the LWOP plan's definition of disability.

12 14. The LTD Plan states that a claimant whose benefits are denied may
13 appeal that decision, but the language does not mandate the claimant file an
14 appeal to exhaust her administrative remedies under ERISA. To the contrary, the
15 LTD Plan states that a claimant may waive her right to appeal.

16 15. Specifically, the LTD Plan states: "Whenever a claim is denied, there
17 is a right to appeal the decision. A written request for appeal must be made to
18 the Insurance Company within 60 days (180 days in the case of any claim for
19 disability benefits) from the date the denial was received. If a request is not made
20 within that time, the right to appeal will have been waived."

21 16. A true and correct copy of the LTD plan is attached hereto as Exhibit
22 1.

23 **LINA'S OBLIGATIONS UNDER ITS "REGULATORY SETTLEMENT AGREEMENT"**

24 17. In May 13, 2013, LINA entered into a Regulatory Settlement
25 Agreement ("RSA") to resolve allegations of improper claims handling raised
26 during a Targeted Market Conduct Examination Disability Income Insurance
27 Claim Handling Practices.
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1 18. In the RSA, LINA agreed to “a plan of corrective action” to be
2 implemented going forward.

3 19. Under the RSA, LINA agreed to use “best practices for adjusting
4 group LTD claims.”

5 20. LINA further agreed to provide its reviewing personnel “all
6 available medical, clinical, and/or vocational evidence in the Disability Claim
7 File... both objective and subjective, concerning impairment.”

8 21. LINA further agreed to gather and consider appropriate medical
9 documentation, including medical records, medical texts and articles, and the
10 claimant’s own statements.

11 22. LINA further agreed that if presented with “[v]ague statements of
12 impairment” such as “Claimant is totally disabled,” “it is appropriate to seek
13 further clarification from the treatment provider making the vague statements.”

14 23. LINA further agreed to consider co-morbid or co-existing conditions
15 that may impact functionality.

16 24. LINA further agreed to “[m]ake appropriate decisions by providing
17 a thorough, fair and objective evaluation of all claimants.”

18 25. LINA further agreed that a “Social Security Disability Income
19 (‘SSDI’) award by the Social Security Administration (‘SSA’) will be given
20 significant weight in a claimant’s favor under certain circumstances in making a
21 Disability analysis. For that reason, where a claimant has been awarded SSDI
22 benefits, the Claim Manager should review the SSA records related to the award
23 and highlight the consideration given to the SSDI award and decision in the
24 claim file documentation.”

25 26. LINA further agreed that exceptions to giving an SSDI award
26 “significant weight” include where the award “is based on the SSA’s use or
27 application of internal administrative standards that may reduce the standard of
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1 proof for certain claimants, e.g. transferability of skills for older claimants, and
2 are inconsistent with the applicable Disability policy's proof requirements for
3 Disability; The SSDI award is aged and/or inconsistent with other information
4 relevant to the Disability determination, including, e.g. more current medical
5 information and/or vocational and financial/earnings information;" where a
6 contractual provisions such as a pre-existing condition exclusion applies to the
7 claimant; or where "records relevant to the timing and/or basis of the SSDI
8 determination are not otherwise available and the claimant has refused to
9 provide and/or timely respond to the Company's reasonable requests for
10 authorization to obtain the SSDI file."

11 27. LINA further agreed that its "Clinical, Vocational, and Medical
12 Professionals" would abide by a "Statement Regarding Professional Conduct"
13 that requires them, among other things, to: "Discuss medical and/or vocational
14 facts in an open and honest manner"; "Provide fair and reasonable evaluations
15 considering all available medical and/or vocational evidence, both objective and
16 subjective, both supporting impairment and supporting capacity"; "Consider all
17 diagnoses and impairments, and their effect on the whole person, when
18 evaluating medical and/or vocational data in a claim file"; "Represent medical
19 and/or vocational facts accurately"; and "Provide reasonable, clear, and accurate
20 explanations of professional opinions so that clear and full explanations of
21 decisions based on those opinions are available to the claimant."

22 28. In administering Ms. Smith's claim, LINA violated multiple
23 obligations under the RSA and, in doing so, violated its obligations to handle Ms.
24 Smith's claim fairly and objectively.

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**Ms. Smith Becomes Disabled After Undergoing Spinal Surgery A Few
Years After Surviving A Helicopter Crash**

29. In December, 2004, Ms. Smith (f/k/a Kelly Foster-Stopka) was working as a flight nurse on an air-evac medical transport helicopter when the helicopter crashed. *See* Exhibit 2 hereto.

30. Following the helicopter crash, Ms. Smith underwent extensive treatment and rehabilitation and was eventually able to return to work.

31. Nevertheless, Ms. Smith continued to suffer pain in multiple areas, including in her lower back. In 2006 she was diagnosed with a previously-unknown broken sacrum and coccyx.

32. In 2007, Ms. Smith began undergoing pain management procedures for her pain, including spinal blocks and radio frequency ablations that deliberately destroy nerves in the back to interrupt pain signals.

33. As the years progressed, Ms. Smith's condition continued to worsen.

34. In 2009, Ms. Smith was diagnosed with rheumatoid arthritis and fibromyalgia, in addition to her continuing back pain.

35. After the air-evac company closed its Tucson operation Ms. Smith took a job as a dialysis nurse with Fresenius Medical Care; beginning work in February 2012.

36. By 2014, Ms. Smith's pain and limitations were so severe that she scheduled spinal surgery for February 2014. Unfortunately, that surgery was postponed due to he having an elevated white blood cell count before the surgery.

37. However, due to Ms. Smith's ongoing, debilitating pain, she was forced to stop work on February 24, 2014.

38. Ms. Smith underwent back surgery – a “[l]umbar laminotomy and foraminotomy including partial facetectomy with decompression of the nerve

1 roots, right L5-S1” and “[d]estruction by thermal ablation of the paravertebral
2 facet joint nerves, bilateral, L3-4, bilateral L4-5, left L5-s1” – on June 27, 2014.
3 Unfortunately, Ms. Smith’s spinal surgery failed to totally alleviate her back pain.
4 Moreover, she continued to be plagued by her rheumatoid arthritis and other
5 conditions; all of which rendered her totally disabled.

6 39. Being unable to work, Ms. Smith applied for long-term disability
7 (LTD) benefits with LINA in July 2014.

8 **LINA DENIES MS. SMITH’S LTD CLAIM, SHE APPEALS, LINA APPROVES HER**
9 **CLAIM, AND LINA DENIES HER CLAIM AGAIN A YEAR LATER**

10 40. Despite Ms. Smith’s physicians’ certifying her disability to LINA, the
11 company denied her LTD application in September 2014.

12 41. By letter dated September 28, 2014, Ms. Smith sent a short, hand-
13 written appeal to LINA disputing the denial of her LTD benefits.

14 42. LINA denied Ms. Smith’s appeal by letter dated November 4, 2014.

15 43. Ms. Smith then submitted a second appeal as to the LTD and LWOP
16 denials which included the report of a comprehensive Functional Capacity
17 Evaluation (FCE) that confirmed Ms. Smith was “unable to perform the physical
18 demands of her past work as a Registered Nurse or any type of work including
19 SEDENTARY work on a regular and consistent basis” (capitalization in original);
20 medical records from Ms. Smith’s attending physicians documenting her
21 ongoing restrictions; records from Ms. Smith’s attending rheumatologist
22 certifying her disability and his agreement with the FCE results; and a
23 declaration from Ms. Smith testifying under oath about her medical conditions
24 and resulting restrictions and limitations.

25 44. By letter dated June 10, 2015, LINA approved Ms. Smith’s LTD
26 benefits under the Plan’s “regular occupation” standard.

1 45. By letter dated June 12, 2015, LINA upheld its decision denying Ms.
2 Smith's LWOP claim.

3 46. Under the LTD plan, Ms. Smith's twenty-four months of "regular
4 occupation" income replacement benefits would end August 24, 2016.

5 47. By letter dated June 16, 2016, LINA denied Ms. Smith's claim for
6 LTD benefits beyond August 24, 2016 claiming she "no longer remain[ed]
7 disabled as defined by [her] policy."

8 48. In that letter, LINA stated that Ms. Smith was capable of performing
9 two occupations that met the Plan's gainful-earnings threshold: "Coordinator,
10 Volunteer Services" and "Utilization-Review Coordinator."

11 49. Because LINA failed to timely provide Ms. Smith with her complete
12 claim file, as she requested, LINA agreed to extend her deadline to appeal the
13 June 16, 2016 decision terminating her LTD benefits to February 13, 2017.

14 **MS. SMITH APPEALS LINA'S SECOND DENIAL, LINA APPROVES HER CLAIM AND**
15 **REINSTATES HER BENEFITS UNDER THE PLAN'S "ANY OCCUPATION" STANDARD,**

16 **MS. SMITH PROVIDES LINA WITH HER SSDI NOTICE OF AWARD,**

17 **AND LINA ALMOST INSTANTLY CUTS HER OFF AGAIN**

18 50. On February 2, 2017, Ms. Smith timely appealed LINA's previous
19 decision terminating her LTD benefits.

20 51. With her appeal, Ms. Smith submitted, among other things, the
21 report of a November 8, 2016 FCE re-confirming that "Ms. Smith continues to be
22 functionally limited from performing both her past work as NURSE... or ANY
23 OTHER WORK including SEDENTARY work on a regular and consistent basis"
24 (capitalization in original), and also stating it was "important to note that Ms.
25 Smith gave full physical effort throughout the FCE testing and there were no
26 signs of unusual behavior, performance concerns or symptom exaggeration";
27 and records from her attending physician documenting that she "continues to
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1 have significant lower back pain,” was “struggling with pain” and “has
2 significant decrease in function,” and her physical exam showed multiple
3 objectively-verified deficits.

4 52. By letter dated April 26, 2017, LINA approved Ms. Smith’s claim for
5 ongoing LTD benefits under the “any occupation” standard.

6 53. On June 13, 2017, two and a half months after determining based on
7 Ms. Smith’s appeal documentation that she was unable to perform any
8 occupation for which she was reasonably qualified, LINA stated in a letter that it
9 had determined that an “Independent Medical Evaluation” (IME) “may help us
10 to make a decision on your claim.”

11 54. Two weeks later, on June 27, 2017, Ms. Smith supplied LINA with
12 her June 21, 2017 “Notice of Award” of Social Security Disability Insurance
13 (SSDI) benefits. As that Notice of Award showed, the Social Security
14 Administration (SSA) “found that you became disabled under our rules on
15 February 24, 2014.”

16 55. Under the Social Security statutes, a claimant is only entitled to SSDI
17 benefits if she is unable “to engage in any substantial gainful activity” in the
18 national economy. *See* 42 U.S.C. § 423(d).

19 56. The SSDI definition of disability is much stricter than the Plan’s “any
20 occupation” definition of disability because, under the LTD plan, Ms. Smith is
21 entitled to benefits if she is unable to perform any occupation for which she is or
22 may become reasonably qualified to perform *and* is “unable to earn 60% or more”
23 of her indexed pre-disability earnings.

24 57. By letter dated July 13, 2017, LINA demanded that Ms. Smith repay
25 an “overpayment” that occurred due to her retroactive award of SSDI benefits.
26 LINA’s overpayment calculation was grossly erroneous and demanded she
27 repay nearly double what she had been awarded in retroactive benefits.
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1 58. On July 20, 2017, Ms. Smith objected to LINA's overpayment
2 calculation and asked the company to re-calculate the amount correctly.

3 59. Also on July 20, 2017, LINA mailed Ms. Smith a letter terminating
4 her LTD benefits. This was the fourth time LINA denied Ms. Smith's claim and,
5 notably, came less than three months after it approved her any occupation
6 benefits on appeal and less than a month after she provided LINA with her SSDI
7 Notice of Award stating the SSDI found she had been disabled since February
8 2014 under the SSA's more strict definition of disability.

9 60. In its July 20, 2017 letter, LINA stated "we had an Independent
10 Medical Evaluation set up for 7/11/2017 and notification was sent to your
11 attorney. We were notified that this exam was not attended and did not provide
12 a reasonable excuse..." The letter then stated that its "Nurse Case Manager and
13 our Occupational Medicine Medical Director then performed a complete review
14 of your file to determine what your current medically supported restrictions and
15 limitations were." LINA stated that those employee medical personnel claimed
16 she was "capable of performing frequent sit, stand and walk" and lifting up to 20
17 pounds occasionally.

18 61. LINA then stated that its vocational department identified two jobs
19 it claimed she was capable of performing: "Coordinator, Volunteer Services" and
20 "Utilization-Review Coordinator"; the same two jobs LINA had said Ms. Smith
21 could perform when it terminated her benefits a year earlier; the same two jobs it
22 acknowledged she was unable to perform when it reinstated her benefits three
23 months earlier; and two jobs the SSA necessarily found she could not perform
24 when it approved her claim one month earlier.

25 62. LINA's bases for terminating Ms. Smith's benefits in July 2017 were
26 baseless.

- 1 A. Ms. Smith's claim file, which LINA sent to Ms. Smith's counsel
2 on August 8, 2017 and stated was the "complete copy of the
3 information used to render our decision on this claim" does not
4 show that LINA actually referred her claim to an outside vendor
5 for an IME.
- 6 i. When LINA previously referred Ms. Smith's claim to an
7 outside vendor for a medical review in May 2015, it completed
8 a "Vendor Referral Form," copies of which are attached as
9 Exhibit 3.
- 10 ii. When LINA previously referred Ms. Smith's claim to an
11 outside vendor for a medical review in May 2015, its internal
12 claim notes discuss the referral, including noting the company
13 had "[s]ubmitted referral for Occ Med/PR [peer review],"
14 "[v]endor made aware to pick up files for processing," and that
15 LINA thereafter "Rec'd final report."
- 16 iii. Ms. Smith's claim file does not contain any correspondence or
17 other documentation in 2017 showing her claim was referred
18 to an outside vendor to set-up and/or coordinate the IME
19 LINA alleges Ms. Smith failed to attend.
- 20 iv. Ms. Smith's claim file does not contain any correspondence
21 from LINA to Ms. Smith or her counsel notifying them of the
22 allegedly-scheduled July 11, 2017 IME.
- 23 v. Ms. Smith's claim file does not contain any records of
24 telephone calls being made to her or her counsel notifying
25 them of the allegedly-scheduled July 11, 2017 IME.
- 26 B. Contrary to LINA's assertion in the July 20, 2017 termination
27 letter, LINA had never notified Ms. Smith's counsel that an IME
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1 had been scheduled for July 11, 2017. *See* Exhibit 4, Declaration of
2 Patrick W. Mause. Specifically, Mr. Mause was never notified by
3 mail, certified mail, phone call, or in any other manner that a July
4 11, 2017 IME had been scheduled for Ms. Smith. *Id.* at ¶¶ 19-23.

5 C. Contrary to LINA's assertion in the July 20, 2017 termination
6 letter, its Occupational Medicine Medical Director did not
7 "perform[] a complete review of [her] file." Instead, that LINA
8 employee, Dr. Donald W. Minter failed to consider Ms. Smith's
9 November 8, 2016 FCE.

10 D. Moreover, in his review, Dr. Minter ignored and discounted the
11 contents of Ms. Smith's medical records, including ignoring the
12 findings of one of Ms. Smith's attending physicians on June 12,
13 2017 that "[t]he past 3 months have been very difficult for her
14 [Ms. Smith]. She is having diffuse joint swelling and pain and this
15 varies at certain times of the day. She has left hip pain for the past
16 3 months. This interferes with her sleep process."

17 E. While LINA is required under the RSA to give significant weight
18 to Ms. Smith's fully-favorable SSDI benefits award, Dr. Minter
19 never considered that award.

20 F. Instead of performing a "complete review" of Ms. Smith's file,
21 and performing the full and fair review she is entitled to under
22 ERISA, LINA and its employees, including Dr. Minter,
23 deliberately ignored and discounted information confirming Ms.
24 Smith's ongoing disability, cherry-picked information to support
25 the termination of her benefits, and did so to serve their own and
26 the company's interests in order to maximize the company's
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1 financial performance and thereby maximize their own potential
2 compensation and/or bonuses in violation of Ms. Smith's rights.

3 63. LINA's terminating Ms. Smith's LTD benefits is contrary to the plan
4 terms, contrary to the overwhelming medical evidence that Ms. Smith was and
5 remains totally disabled as defined under the LTD and LWOP plans, contrary to
6 and in violation of LINA's obligations under the RSA, and is driven by LINA's
7 and its employees' financial incentive to minimize approved claims.

8 **Ms. Smith's Claim Is Ripe Because The Plan Does Not Mandate That She**
9 **Exhaust Any Administrative Remedies Before Filing Suit**

10 64. Where an ERISA plan makes an administrative appeal process
11 appear to be "optional," or where the plan does not mandate exhaustion of
12 administrative remedies as a prerequisite to filing suit, a claimant need not
13 exhaust any administrative remedies before filing suit. *Spinedex Physical Therapy*
14 *USA Inc. v. United Healthcare of Arizona, Inc.*, 770 F.3d 1282, 1298-99 (9th Cir. 2014)
15 ("A number of our sister circuits have held that a claimant need not exhaust
16 when the plan does not require it. We arguably adopted the same rule in *Nelson*
17 *v. EG & G Energy Measurements Group, Inc.*, 37 F.3d 1384 (9th Cir.1994), and we do
18 so explicitly today.").

19 65. The LTD Plan states: "Whenever a claim is denied, **there is a right to**
20 **appeal** the decision. A written request for appeal must be made to the Insurance
21 Company within 60 days (180 days in the case of any claim for disability
22 benefits) from the date the denial was received. **If a request is not made within**
23 **that time, the right to appeal will have been waived.**" (Ex. 1 at Plan p. 27 (Kelly-
24 Smith-0372) (emphasis added)).

25 66. The LTD Plan does not mandate exhaustion of administrative
26 remedies as a prerequisite to filing suit. Rather, it is a right Ms. Smith possesses
27 but, by the Plan's plain language, may "waive."
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67. Alternatively, the Plan language “could reasonably be read as making optional the administrative appeal process” thereby alleviating Ms. Smith of any theoretical obligation to go through the administrative appeal process before filing suit. *Spinedex*, 770 F.3d at 1298.

68. Ms. Smith’s claim is therefore ripe and she may file suit under ERISA, 29 U.S.C. § 1132(a)(1).

69. Moreover, to the extent Ms. Smith is entitled to equitable relief under 29 U.S.C. § 1132(a)(3), there is no requirement that she exhaust any administrative remedies before bringing suit under that section. *Spinedex*, 770 F.3d at 1294 (“as a general rule, exhaustion is not required for statutory claims like Aragon’s [claim for breach of fiduciary duty under ERISA].”).

COUNT ONE: CLAIM BENEFITS UNDER ERISA

70. Ms. Smith incorporates the preceding allegations as if fully set forth herein.

71. Ms. Smith was and remains totally disabled as defined under the LTD and LWOP plans.

72. Ms. Smith has been damaged by LINA’s improper decision terminating her LTD and LWOP claims.

73. The Plan does not grant LINA discretion to determine entitlement to benefits. Therefore the Court must review LINA’s decisions under the *de novo* standard of review.

74. Under the *de novo* standard of review, LINA’s decision was erroneous, contrary to the plan terms, and contrary to the medical evidence. Ms. Smith is entitled to continuing LTD and LWOP benefits under the Plan.

75. Even under the abuse of discretion standard of review, LINA abused its discretion because its decisions terminating Ms. Smith benefits were arbitrary and capricious and because they were caused or influenced by LINA’s,

1 its reviewing physicians', and the Plan's financial conflicts of interest. These
2 conflicts of interest precluded the full and fair review required by ERISA, 29
3 U.S.C. 1133(2) and 29 C.F.R. § 2560.503-1(g)(1) and (h)(2).

4 76. Upon information and belief, the LINA employees involved in Ms.
5 Smith's claim are eligible for bonuses through their employment with LINA.

6 77. Upon information and belief, the bonuses of the LINA employees
7 involved in Ms. Smith's claim are based in whole or in part on the company's
8 financial performance.

9 78. Upon information and belief, LINA and its employees and
10 consultants who evaluated Ms. Smith's claim suffer from financial conflicts of
11 interest which infected the claim process and which precluded a full and fair
12 review of Ms. Smith's claim.

13 79. LINA and the Plan have a parsimonious claims handling history.
14 *See e.g. Salomaa v. Honda Long Term Disability Plan*, 642 F.3d 666, 678 (9th Cir.
15 2011); May 13, 2013 LINA Regulatory Settlement Agreement.

16 80. LINA has a long history of improper claim administration. *Id.*

17 81. LINA violated the terms of the Regulatory Settlement Agreement in
18 administering Ms. Smith's claim.

19 82. Ms. Smith is entitled to discovery regarding the effects of the
20 procedural irregularities that occurred during the claims handling process and
21 regarding the effects of LINA's, its reviewing physicians', its employees', and the
22 Plan's financial conflicts of interest, biases, and motivations on the decision
23 terminating Ms. Smith's LTD and LWOP claims. Evidence of these conflicts and
24 procedural irregularities include but are not limited to Dr. Minteer's failure to
25 review probative and recent evidence confirming Ms. Smith's ongoing disability
26 such as her November 2016 FCE and the June 2017 SSDI benefit award and his
27 disregarding and discounting other information confirming her ongoing
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1 disability while cherry-picking the record to support his incorrect and biased
2 decision that Ms. Smith did not suffer disabling restrictions and limitations.
3 Further evidence of these conflicts includes the fact that no other LINA
4 employees raised these issues with Dr. Minter, accepting instead his obviously
5 incomplete and therefore insufficient opinion to justify terminating Ms. Smith's
6 benefits. Further evidence of these conflicts includes LINA's misrepresenting in
7 its July 20, 2017 letter terminating Ms. Smith's ongoing LTD benefits that Dr.
8 Minter had "performed a complete review of [her] file" and that Ms. Smith had
9 been scheduled for an IME.

10 83. Pursuant to ERISA, Ms. Smith is entitled to discovery regarding,
11 among other things, the credibility of the medical and vocational personnel
12 LINA relied upon to terminate Ms. Smith's LTD benefits. *Opeta v. Nw. Airlines*
13 *Pension Plan for Contract Employees*, 484 F.3d 1211, 1217 (9th Cir. 2007).

14 84. Pursuant to ERISA, Ms. Smith is entitled to take discovery,
15 introduce evidence, and then establish the effects of LINA's personnel's
16 credibility and biases through a bench trial regarding, among other things, the
17 credibility of the medical and vocational personnel LINA relied upon to
18 terminate Ms. Smith's LTD benefits and the effect of their inherent financial
19 conflicts of interest on their credibility. *See e.g. Nolan v. Heald Coll.*, 551 F.3d 1148,
20 1154 (9th Cir. 2009) ("Instead, without evidentiary hearing or bench trial, the
21 district court considered and rejected Nolan's bias argument by weighing the
22 documentary evidence of bias, and ignoring the protections that summary
23 judgment usually affords the non-moving party. Though the district court would
24 have been permitted to weigh such evidence after bench trial, weighing that
25 evidence on summary judgment was improper in this case where the evidence
26 was outside of the administrative record."); *Demer v. IBM Corp. LTD Plan*, 835
27 F.3d 893, 901-02 (9th Cir. 2016) ("As a preliminary matter, we note that Mr.
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1 Demer's argument here is comparable to conventional approaches to discrediting
2 the testimony of retained experts whose objectivity may be challenged based on,
3 *e.g.*, the number of times he or she has served as an expert in support of a party
4 and the amount of compensation received."").

5 85. Ms. Smith has been injured and suffered damages in the form of lost
6 LTD and LWOP benefits as a result of LINA's and/or the Plan's wrongful
7 decision to terminate her disability benefits.

8 86. Ms. Smith has been further injured and suffered damages by losing
9 other benefits to which she may have been entitled under her employer's ERISA-
10 governed benefits plan.

11 87. Pursuant to ERISA, 29 U.S.C. § 1132(a)(1), Ms. Smith is entitled to
12 recover unpaid disability benefits, reinstatement of her LTD and LWOP benefits,
13 prejudgment interest, reasonable attorney's fees and costs, and/or is entitled to
14 an order enforcing her right to disability benefits under the LTD plan and under
15 the LWOP provision of the life insurance plan.

16 88. To the extent Ms. Smith may not be entitled to recover unpaid
17 disability benefits and/or reinstatement of her LTD and LWOP benefits, she is
18 entitled to other equitable relief under 29 U.S.C. § 1132(a)(3) because LINA's
19 termination of, and failure to reinstate her benefits constitutes a breach of its
20 fiduciary obligations under ERISA. *Cigna Corp. v. Amara*, 563 U.S. 421 (2011).

21 WHEREFORE, Plaintiff Kelly Smith prays for judgment as follows:

- 22 A. For long-term disability benefits due under the Plan and/or an
23 order enforcing her right to LTD benefits under the Plan;
24 B. For reinstatement of her life insurance waiver of premium claim
25 and/or an order enforcing her right to LWOP benefits under the
26 Plan;

- 1 C. For any other benefits to which Ms. Smith may be entitled due to her
2 disability;
- 3 D. For other equitable relief as may be allowed by law including under
4 29 U.S.C. § 1132(a)(3);
- 5 E. For prejudgment interest at the maximum legal interest rate until
6 paid;
- 7 F. For attorney's fees and costs incurred as a result of prosecuting this
8 suit pursuant to 29 U.S.C. § 1132(g); and
- 9 G. For such other relief as the Court deems just and proper.

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11 DATED this 3rd day of October, 2017.

12 LAW OFFICE OF PATRICK MAUSE,
13 PLLC

14 By s/ Patrick W. Mause
Patrick W. Mause
Attorney for Plaintiff

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